

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD

In the Matter of	)	
Application 28883,	)	ORDER: WR 91-02
	)	
ERNEST RIGHETTI & SONS	)	SOURCE: West Corral de
	)	Piedra Creek
Applicants,	)	
	)	COUNTY: San Luis Obispo
FREDRIC AND LAVONNE RIGHETTI	)	
PARAGON VINEYARD CO.,	)	
CHRIS DARWAY, JOHN CHRISTENSEN	)	
CLARENCE AND LEONA ASMUSSEN,	)	
ROBERT AND ANN SCHIEBELHUT,	)	
TALLEY FARMS PROFIT SHARING	)	
TRUST,	)	
	)	
Protestants.	)	
	)	

ORDER AFFIRMING DECISION 1627  
AND DENYING PETITION FOR RECONSIDERATION

BY THE BOARD:

**1.0 INTRODUCTION**

The State Water Resources Control Board (Board) having adopted Decision 1627 on November 27, 1990; the Board having received a timely petition for reconsideration from Ernest Righetti and Sons (petitioner); and the Board having considered the petition, finds as follows:

**2.0 GROUNDS FOR RECONSIDERATION**

Water Code Section 1357 authorizes the Board to reconsider all or part of a decision approving an application to appropriate water for cause, but does

not provide for reconsideration as a matter of right. The regulations implementing Water Code Section 1357 are codified in Title 23 of the California Code of Regulations at 23 CCR 768-770.

Section 768 provides grounds for reconsideration under the following circumstances:

- "(a) Irregularity in the proceedings, or any ruling, or abuse of discretion, by which the person was prevented from having a fair hearing;
- "(b) The decision or order is not supported by substantial evidence;
- "(c) There is relevant evidence which, in the exercise of reasonable diligence, could not have been produced;
- "(d) Error in law."

### 3.0 SUMMARY OF PETITION

The petitioner contends that Decision 1627 is not supported by substantial evidence in the record regarding Term 8 of the order. Term 8 is a condition that will be included in the permit issued pursuant to Application 28883 to protect downstream paramount water rights. Term 8 requires that on July 1 of each year the petitioner must release all water stored in the preceding storage season unless the total rainfall

at the Cal Poly Gage for the period of July 1 of the previous year to June 30 of the current year is greater than or equal to 26.0 inches. The petitioner argues that a standard of 20.2 inches is sufficient to protect senior rights.

The petitioner further contends that there is relevant evidence which, in the exercise of reasonable diligence, could not have been produced at the Board meeting when Decision 1627 was considered.

Finally, the petitioner contends that reconsideration is appropriate in order to allow Board staff adequate time to review information contained in the Declaration of John Merriam regarding lowering the 26.0 inch standard. The Board received the declaration at 4:58 p.m. on November 26, 1990, the day before the Board adopted Decision 1627. The hearing record closed on February 23, 1990.

#### **4.0 ANALYSIS OF ISSUES RAISED BY PETITION**

The 26.0 inch standard is based on evidence submitted by the petitioner at the Board's hearing on January 11, 1990. The petitioner's experts testified at the hearing that water was available for appropriation in wet years, but that surplus water is not available every year. The petitioner did not provide a

quantitative definition of a wet year. The hearing record does not contain such a definition, nor does the hearing record contain the data that are customarily used in making such a definition. In the absence of such data, the Board analyzed the effects of the proposed appropriation on downstream surface and ground water users in order to determine the availability of water for appropriation. The Board compared precipitation records with the water level records in selected wells to determine how much annual rainfall is needed for ground water levels to recover in the basin. The Board found that the 26.0 inch standard will protect paramount rights of the users of ground water and the underflow of West Corral de Piedra Creek.

The petitioner concurs that the Board's basic approach in limiting storage based on annual precipitation is reasonable and appropriate ("A Review Study of the Previously Submitted Information Relative to Well Recharge Along the West Fork of the Corral de Piedra Creek and Rainfall Frequency" (Review Study) by John L. Merriam, p. 5). The petitioner contends, however, that the Board's analysis is in error and is not based on substantial evidence because the analysis used data from ten wells in the basin. The petitioner contends that the records from wells 17R1, 17Q4, 18J2, 19H1, 19L1, and 19R1 (six wells) should not have been considered.

The petitioner contends that the six wells are not relevant to the analysis because they are not recharged by West Corral de Piedra Creek. The petitioner claims that only wells 16N1, 20G1, 20K1, and 29C1 (four wells) are recharged by West Corral de Piedra Creek. The petitioner further contends that if only the four wells are used in the analysis, and that if certain data for the wells are excluded from the analysis, the result shows that a 20.2 inch precipitation standard is adequate to protect senior rights. The data excluded by the petitioner are water levels for the drought years 1987-89, and the April 5, 1965 water level for well 29C1. In addition, the petitioner added a spring 1964 water level for well 29C1 that is not in the hearing record.

Direct recharge of a well by West Corral de Piedra Creek was not a prerequisite for inclusion in the Board's analysis. Since the record indicated that the six wells are all perforated in the same aquifer and are subject to the same yearly climatic conditions, their hydrographs are valid indicators of basin recovery. Given the relatively small size of the basin, the response of wells recharged mainly by West Corral de Piedra Creek is unlikely to be significantly different from other nearby wells in the basin. This is confirmed by the similar character of the hydrographs of the ten wells.

In a simple trend analysis like the one used in Decision 1627, a larger data set will minimize errors due to timing of well measurements or well interference problems. Additionally, aquifer recovery may vary in different years having identical rainfall due to antecedent soil conditions, available storage space in the aquifer, and ongoing surface and subsurface diversions. A larger data set will more fully show the entire range of aquifer responses, both areally and temporally. Therefore, inclusion of the six wells in the analysis is appropriate.

The petitioner contends that an analysis of the four wells, excluding certain data, shows that all four wells recover when rainfall exceeds 16.87 inches. By adding a safety factor of 3.33 inches, the petitioner recommended a precipitation standard of 20.2 inches. The basis for the safety factor was not explained by the petitioner.

The petitioner also did not explain his exclusion of water levels from the 1987-89 drought and the spring 1965 water level for well 29C1. We find that these data are relevant because they provide a record of aquifer recovery during an extended drought (1987-89) and in an average year (1965). In conclusion, we find that the petitioner has not presented any valid reason for excluding these data.

The excluded data show that well 29C1 had poor recovery in a year of 22 inches of rainfall, and that wells 16N1, 20G1, and 20K1 had poor recovery in a year of 20 inches of rainfall. If these data are included in petitioner's analysis, the resulting trend shows that good well recovery occurs when rainfall is greater than or equal to 23 inches. This conclusion is the same as the conclusion of the Board's ten well analysis. In Decision 1627, the Board found that poor well recovery occurs frequently when rainfall is less than 23 inches.

The Board added a three inch precipitation safety factor to arrive at a standard of 26.0 inches. The Board's safety factor is based on a drought frequency analysis of the entire Cal Poly Gage precipitation record. The petitioner did not challenge the drought frequency analysis.

It is difficult to compare the petitioner's four well analysis with the Board's ten well analysis because the petitioner's definition of "good recovery levels" appears to be different from that used by the Board. The Board's definition of "good recovery level" for a well is the highest fall water level on a hydrograph of water level measurements taken at the well. The petitioner appears to have used the stream surface

elevation adjacent to the well as the "good recovery level." Although the stream surface elevation is an appropriate recovery level for wells near the creek, those elevations are not in the hearing record. The elevations can be estimated by interpolating between contours on a topographic map; however, elevations interpolated by this method may be in error by several feet. This would be a significant error.

The Board's analysis used the elevation of the highest fall water level as the good recovery level. This elevation represents the minimum historic drawdown of the aquifer due to pumping and effluent flow from the basin. A spring level higher than the highest fall water level is considered to represent good recovery because the water level has exceeded the minimum drawdown elevation.

We find that the 26.0 inch standard is appropriate and that it is based on substantial evidence in the record. It should be noted that the Board reserved jurisdiction to modify Term 8 based on the findings of the hydrology study now in progress of the Pismo Ground Water Basin and the Edna Valley. The study will include a safe yield estimate for the basin.

The petitioner had an opportunity to present evidence at the January 11, 1990, hearing regarding the availability of water for appropriation and to provide an analysis of the evidence at the hearing. Staff reviewed and the Board considered the comments on the proposed decision contained in the Declaration of John Merriam dated November 26, 1990, and did not find them persuasive. In addition, the Board finds that, in the exercise of reasonable diligence, the analysis of the evidence by Mr. Merriam could have been produced at the hearing which was held on January 11, 1990.

#### 5.0

#### CONCLUSION

We conclude that Decision 1627 was fairly decided; that it is supported by substantial evidence in the record; that there is no additional relevant evidence which in the exercise of reasonable diligence could not have been produced in the hearing; and that the evidence and analysis submitted by the petitioner after the close of the hearing record would not support a different result

even if it had been submitted on a timely basis.  
Consequently, the petition for reconsideration should  
be denied.

ORDER

NOW, THEREFORE, IT IS ORDERED that Decision 1627 is affirmed and  
that the petition for reconsideration filed by Ernest Righetti  
and Sons is denied.

CERTIFICATION

The undersigned, Administrative Assistant to the Board, does  
hereby certify that the foregoing is a full, true, and correct  
copy of an order duly and regularly adopted at a meeting of the  
State Water Resources Control Board held on February 21, 1991.

AYE: W. Don Maughan  
Eliseo M. Samaniego  
John Caffrey

NO: None

ABSENT: Edwin H. Finster

ABSTAIN: None

  
Maureen Marche  
Administrative Assistant to  
the Board